



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

September 23, 1992

Mr. Riley J. Simpson
President
Board of Trustees of the
Central Texas College District
P. O. Box 1800
Killeen, Texas 76540-9990

Letter Opinion No. 92-52

Re: Application of the nepotism law to a contract for insurance coverage between the Central Texas College District and a corporation where a member of the board of trustees serves as an officer and director (ID# 15849)

Dear Mr. Simpson:

You have inquired about a possible conflict of interest involving a member of the Board of Trustees of the Central Texas College District. The Central Texas College District is a community college district, which will become a four-year institution of higher education in the future if the terms of a 1989 enactment are met. See Attorney General Opinion JM-1153 (1990). A junior college district is not authorized to request an attorney general opinion. Attorney General Opinion DM-20 (1991). We will however address your question, because it can be answered by reliance on statutes and previously published opinions.

You state that a member of your board of trustees is an officer and director of the corporation that provides the insurance coverage for Central Texas College. Following a solicitation for proposals, the insurance contract was awarded to this corporation. When the contract was awarded, the board member in question executed a conflict of interest statement and did not vote or enter into any of the discussions concerning the contract. You ask whether the board member violated the nepotism law, V.T.C.S. art. 5996a, as applied in Attorney General Opinion DM-76 (1992).¹

¹We will address your question about the nepotism statute, even though it is the common-law doctrine of incompatibility, and not the nepotism statute, that prohibits a governmental body from exercising its power of appointment in favor of one of its members. *Ehlinger v. Clark*, 8 S.W.2d 666 (Tex. 1928); *St. Louis Southwestern Ry. Co. of Texas v. Naples Indep. Sch. Dist.*, 30 S.W.2d 703 (Tex. Civ. App.--Texarkana 1930, no writ); Attorney General Opinion JM-934 (1988). The common-law doctrine of incompatibility prohibits a single individual from simultaneously holding two public positions in which one is accountable to the other. Attorney General Opinion JM-1087 (1989); Letter

The nepotism statute prevents a board member from voting for the appointment "to any office, position, clerkship, employment or duty" of any person related within a prohibited degree to that board member or any other member of the board. V.T.C.S. art. 5996a, § 1(a). Attorney General Opinion DM-76 considered whether the nepotism statute applied to a person hired by a governmental body as an independent contractor rather than as a regular employee. We concluded that

the nepotism law applies *whenever a governmental body hires a natural person*, whether as an employee or as an independent contractor.

Attorney General Opinion DM-76 at 2-3 (emphasis added).

The nepotism statute addresses the hiring of individual persons by a governmental body, and not a contract between a governmental body and a corporation that employs a number of people in various capacities. Thus, the nepotism statute does not apply to the contract between the board of trustees of Central Texas College and the insurance corporation of which a board member is officer and director.

The contract with the insurance corporation is subject to chapter 171 of the Local Government Code, which regulates conflicts of interest involving local public officials. If a local public official has a substantial interest in a business entity that may be affected economically by action of his governing body, he must file an affidavit and abstain from participation in the matter in accordance with the terms of section 171.004. See Local Gov't Code § 171.002 (defining "substantial interest in a business entity"). A "local public official" subject to chapter 171 is defined as

a member of the governing body . . . of any district (including a school district), . . . or other local governmental entity who exercises responsibilities beyond those that are advisory in nature.

Local Gov't Code § 171.001(1) (emphasis added). A member of the board of trustees of a community college district is a local public officer subject to chapter 171 of the Local Government Code. Under the circumstances described in section

(footnote continued)

Advisory No. 114 (1975). It does not apply to a contract by a governmental body with a private corporation of which one of its members is an officer or director.

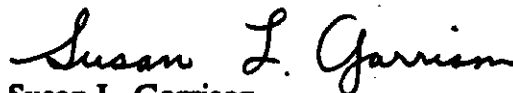
171.004, he must file an affidavit and recuse himself. *See generally* Attorney General Opinion JM-379 (1985). Whether the board member in this case fits these circumstances is a fact question; however, your letter indicates that he did file an affidavit and recuse himself.

We note that chapter 171 applies only to local governmental officials. There is no similar statute that applies to state officers, such as governing boards of state colleges and universities. *See* Attorney General Opinion JM-671 (1987). State level institutions are subject to the strict common-law rule that bars a governmental body from entering into a contract in which one of its members is pecuniarily interested. Attorney General Opinion JM-817 (1987). After Central Texas College becomes an institution of higher education, its governing body will be absolutely prohibited from entering into a contract in which a member of the board has a pecuniary interest.²

S U M M A R Y

Article 5996a, V.T.C.S., the nepotism law, prevents a governmental body from employing a natural person who is related to a member of the governmental body within a certain degree. If a member of the board of trustees of a junior college district is an officer and director of a corporation that employs numerous persons in various capacities, the nepotism law does not prevent a governmental body from contracting for insurance with that corporation. Chapter 171 of the Local Government Code, which regulates conflict of interest of local public officials, applies to members of the board of trustees of a junior college.

Yours very truly,



Susan L. Garrison
Assistant Attorney General
Opinion Committee

²Our conclusion is of course subject to any future legislative action that may change conflict of interest laws.